

## REMARKS

Following entry of the foregoing amendment, claims 1-6 are pending in the instant application. Support for amended Claim 1 appears in at least Claim 1 as originally filed as well as in the Specification at page 1, lines 1-32 through page 2, lines 1-6; page 6, lines 10-20; page 7, lines 1-9; and Example 1. The foregoing amendment was made without any intention to abandon any subject matter, but with the intention that one or more claims of the same, lesser, or greater scope may be pursued in a later application or in a continuation, continuation-in-part, or divisional application. The present amendment does not add new matter. The sole basis for the Examiner's rejection of Claims 1-6 is addressed below.

### Rejection of Claims 1 and 2 Under 35 U.S.C. §102(b)

The Examiner has maintained the rejection of April 30, 2008 of Claims 1 and 2 under 35 U.S.C. §102(b) as being inherently anticipated by Hastings *et al.* (U.S. 5,626,849). The Examiner asserts that Hastings *et al.* teach the use of (-) citric acid for the purpose of weight loss, and that there "has to be some type of inflammation in the body at any given moment." (Page 2 of the Office Action dated April 30, 2008). The Examiner reasons that since the claims of the instant application are not drawn to a specific type of inflammation, they read on any types of inflammatory process in the body. (Page 2 of the Office Action dated January 7, 2009). The Applicants respectfully traverse and assert that Claims 1 and 2 as presently amended obviate the rejection of Claims 1 and 2 under 35 U.S.C. §102(b) as being inherently anticipated by Hastings *et al.* (U.S. 5,626,849). Claims 1 and 2 as amended do not read on any type of inflammatory process in the body, but are directed to chronic inflammation.

As amended, Claim 1 is drawn to a method of treating or ameliorating chronic inflammation in a subject comprising orally administering an effective amount of (-)-hydroxycitric acid. Claim 2 which depends from Claim 1, provides that the (-)-hydroxycitric acid is supplied in a therapeutically effective amount of the free acid or its lactone. A reference is said to inherently anticipate a claim if the cited reference necessarily and inevitably produces the claimed result upon performance of the method steps (Schering Corp. v. Geneva Pharms., Inc., 339 F.3d 1373, 1379 (Fed. Cir. 2003)). The Applicants assert that the teachings of Hastings *et al.*, do not necessarily or inevitably produce treatment or amelioration of chronic inflammation. There is nothing in the teachings of Hastings *et al.* that directly anticipates the claimed invention, as Hastings *et al.* do not teach treating chronic inflammation. Also, there is nothing in the teachings of Hastings *et al.* that inherently anticipates Applicant's claimed invention as Hastings *et al.* do not teach administration to a subject suffering from treatable inflammation nor

do they teach administration of an amount effective for treating chronic inflammation. There is no evidence that every subject suffers from chronic inflammation or guidance as to what amount of (-)-hydroxycitric acid would constitute a therapeutically effective amount to treat or ameliorate chronic inflammation. In light of these remarks, reconsideration and withdrawal of the rejection is respectfully requested.

#### **Rejection of Claims 4-6 Under 35 U.S.C. §102(e)**

The Examiner has maintained the rejection of April 30, 2008 of Claims 4-6 under 35 U.S.C. §102(e) as being inherently anticipated by Clouatre *et al.* (U.S. 6,447,807). The Examiner asserts that Clouatre *et al.* teach the use of (-)-hydroxycitric acid in a sustained release form for the purpose of weight loss and appetite suppression. The Examiner again asserts that there “has to be some type of inflammation in the body at any given moment.” (Page 2 of the Office Action dated April 30, 2008). The Examiner reasons that since the claims of the instant application are not drawn to a specific type of inflammation, they read on any types of inflammatory process in the body. (Page 2 of the Office Action dated January 7, 2009).

As amended, Claim 1 is drawn to a method of treating or ameliorating chronic inflammation in a subject comprising orally administering an effective amount of (-)-hydroxycitric acid. Claims 4-6 depend from Claim 1, and therefore, incorporate all the limitations of the base claim. Accordingly, the Applicants respectfully traverse and assert that Claims 4-6 as presently amended obviate the rejection Claims 4-6 under 35 U.S.C. §102(e) as being inherently anticipated by Clouatre *et al.* (U.S. 6,447,807).

As noted above, a reference is said to inherently anticipate a claim if the cited reference necessarily and inevitably produces the claimed result upon performance of the method steps (Schering Corp. v. Geneva Pharms., Inc., 339 F.3d 1373, 1379 (Fed. Cir. 2003)). The Applicants assert that the teachings of Clouatre *et al.*, do not necessarily or inevitably produce treatment or amelioration of chronic inflammation. There is nothing in the teachings of Clouatre *et al.* that directly anticipates the claimed invention, as Clouatre *et al.* do not teach treating chronic inflammation. Also, there is nothing in the teachings of Clouatre *et al.* that inherently anticipates Applicant’s claimed invention as Clouatre *et al.* do not teach administration to a subject suffering from treatable inflammation nor do they teach administration of an amount effective for treating chronic inflammation. There is no evidence that every subject suffers from chronic inflammation or guidance as to what amount of (-)-hydroxycitric acid would constitute a therapeutically effective amount to treat or ameliorate chronic inflammation. In light of these remarks, reconsideration and withdrawal of the rejection are respectfully requested.

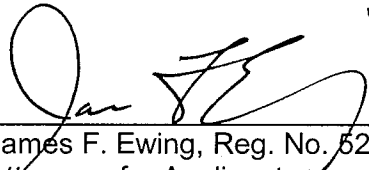
### CONCLUSION

The Commissioner is hereby authorized to charge any additional fees that may be required regarding this application under 37 C.F.R. §§1.16 1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If an extension of time is needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fee to Deposit Account No. 19-0741.

Applicant respectfully submits that the pending claims are in condition for allowance and respectfully request the same. If there are any questions regarding these remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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